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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-265
	)	
Development of Competition and Diversity in Video Programming Distribution and Carriage	)	

To: The Commission

COMMENTS OF VIACOM INTERNATIONAL INC.

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SUMMARY

Viacom International Inc. ("Viacom") hereby comments on the Notice of Proposed Rule Making relating to Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act"). Viacom's comments focus on Section 19, which amends the Communications Act of 1934 by adding new Section 628.

Viacom submits that, in promulgating regulations to implement Section 628, the Commission should ensure that it does not unduly infringe on the workings of the marketplace in circumstances where there is no real danger of anti-competitive consequences. Specifically, Viacom urges the Commission to adopt an exception to the rules for any programmer whose commonly owned cable systems account for less than five percent total network subscribers. Such programmers simply have no incentive to act in an anti-competitive manner.

With regard to application of the anti-discrimination rules in general, they should apply only to the local market in which a programmer has an interest in a distributor. To the extent programmers might be perceived as having an incentive to operate in an anti-competitive manner in order to help an affiliated distributor, they have no such incentive in situations in which they do not have an interest in both sides of the transaction.

Viacom also proposes a standard to be used to determine whether a programmer has engaged in discriminatory pricing. The Commission is urged to adopt a "zone of reasonableness" within which differences in rates will presumptively be considered non-

discriminatory. This approach is appropriate because of the myriad factors that legitimately go into the determination of the rate to be charged to a particular distributor. In order to establish a prima facie case, a complainant should be expected to establish that the rate offered to or paid by it is outside the zone. With regard to discovery in general, Viacom urges the Commission to promulgate rules which will ensure that the process will not be used by purported complainants merely to gain a competitive advantage through access to proprietary information.

Viacom further urges the Commission to adhere to its tentative conclusion against retroactive application of the rules to existing agreements between programmers and cable operators. Not only is retroactive application of regulation disfavored generally, but retroactivity here would have significant adverse consequences, particularly to programmers who have entered into long-term agreements with program suppliers in reliance on revenues anticipated under existing affiliation agreements.

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COMMENTS OF VIACOM INTERNATIONAL INC.

Viacom International Inc. ("Viacom"), by its attorneys, hereby offers its comments to the Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding. Viacom, a diversified entertainment company which owns and operates program services, cable systems and other entertainment-related businesses,[1] could be affected substantially by regulations

[1] Showtime Networks Inc. ("SNI"), a wholly-owned subsidiary of Viacom, owns and operates the premium programming services Showtime, The Movie Channel, and FLIX. MTV Networks ("MTVN"), a division of Viacom, owns and operates the advertiser-supported programming services MTV: Music Television ("MTV"), VH-1/Video Hits One ("VH-1") and Nickelodeon (comprising the Nickelodeon and Nick at Nite programming blocks ("Nick")). Viacom also owns Showtime Satellite Networks Inc. ("SSN"), which distributes SNI, MTVN and third parties program services to owners of home television receiver-only ("HTVRO") earth stations nationwide. Through wholly-owned subsidiaries, Viacom also holds partnership interests in Comedy Central, Lifetime Television and All News Channel, advertiser-supported programming services, and in Pacific Sports Northwest, a regional sports service in the Seattle-Tacoma, Washington, area. Viacom Cable owns and operates cable systems serving approximately 1,000,000 subscribers.

adopted by the Commission in response to the program access provisions of the Cable Television Consumer Protection and Competition Act of 1992.

I. Introduction

The NPRM seeks comment on Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (the "Cable Act of 1992" or "the Act"). Section 19 amends the Communications Act of 1934 by adding a new Section 628. Section 628 was enacted in order to "increas[e] competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies." Cable Act of 1992, § 19; NPRM at ¶6. Congress sought to accomplish this goal by deterring certain practices of vertically integrated entities (i.e., entities that own significant interests in both cable systems and program services) that it found to be anti-competitive. See, e.g., Cong. Rec., July 23, 1992, at H6533.

Before any conduct is actionable under the Act, it must be "both (i) 'unfair,' 'deceptive,' or 'discriminatory,' and (ii) significantly hinder multichannel video programming distributors from providing satellite programming to consumers. See Cable Act of 1992, § 628(b); NPRM at ¶10. Further, the language of the Act indicates that conduct that "might be considered unfair or discriminatory from the vantage point of a particular competitor" should not be actionable if it "does not significantly harm competition in multichannel video programming distribution." NPRM at ¶10.

Moreover, in promulgating regulations to deter these practices, the Commission has been directed to "rely on the marketplace to the maximum extent feasible." Cable Act of 1992 at § 2(b)(2); see also NPRM at ¶12. As set forth more fully below, Viacom urges the Commission to adopt a regulatory scheme that will prevent the harms enunciated by Congress without unduly impinging on the operations of the marketplace.

II. The Commission Should Exclude Any Network Under Common Ownership With Cable Systems That Account for Less Than Five Percent Of The Network's Subscribers

The Commission seeks comment on whether its rules should "exclude certain entities that lack significant anti-competitive potential due to their limited holdings or negligible market share as programming vendors[2] or cable operators, such that the degree of vertical integration might be deemed de minimis." NPRM

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[2] By the term "programming vendors," Congress is referring to entities that deliver a program service to distributors. For purposes of these comments, the terms "programmer" or "program services" are equivalent to "programming vendors."

at ¶11.[3] Viacom submits that such a de minimis exception is appropriate -- especially in circumstances where an entity's cable system holdings represent a very small percentage (less than 5%) of the total subscribership of its affiliated networks.[4]

Section 628 derives from an assumption that (vertically integrated) entities with significant cable and programming interests might have an economic incentive to favor their affiliated enterprises over potential competitors. See NPRM at ¶ 3. Indeed, under the Act, program services with no attributable interests in cable system operators are presumed to have no incentive to favor cable over potential competition and so are exempt from program access regulation. Similarly, the Commission need regulate only in instances in which vertically integrated programmers have a clear incentive to act in an anti-competitive manner.

Viacom submits that, just like non-vertically integrated programmers, networks which rely on non-affiliated distributors

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[3] The Commission also requests comment on the standards to be used to determine whether an entity has an "attributable" interest in a cable operator or programmer. NPRM at ¶ 9. Although Viacom will not address those standards in detail in these comments, it notes that the attribution standards used in the broadcasting field are not appropriate in the present circumstances. The purpose of the attribution test here would not be to determine whether a partial owner had some influence over a cable programming entity. Rather, it would be to assess whether that owner had a significant degree of control to compel the network to act against its own fundamental business interests.

[4] This 5%-of-total-subscribership standard was originally proposed by Lifetime Television.

for 95% of their subscriber base have no incentive to distort the operation of their national program services so as to bring about the anti-competitive results that Congress sought to deter. As a matter of business necessity (to achieve maximum subscriber fees and/or advertising revenues), the primary goal of a satellite-delivered program service is to attain the broadest distribution possible. The incentive to act in an anti-competitive manner could be present (if at all) only if the programmer had a sufficiently high level of ownership in a particular distribution medium, such as hard-wire cable, so that lost profits on the programming side (resulting from decreased subscription and/or viewership levels) would somehow be overcome by increased profits on the distribution side. While Congress may believe that vertically integrated programmers with large cable holdings have an incentive to discriminate in favor of non-affiliated cable operators in order to ensure the continued viability of cable as a distribution technology, this is not the case where the cable holdings represent a very small percentage of the nationwide subscriber base. Indeed, nothing in the Act or its legislative history compels the Commission to ignore both logic and reason and apply a per se rule, applying the restrictions of Section 19 to a programmer irrespective of the extent or degree of its vertical integration.[5]

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[5] It is also important to acknowledge that, through vertical integration, cable operators have been an important (continued...)

The operations of Viacom illustrate that the marketplace has worked -- and will continue to work -- to ensure that vertically integrated entities with only modest cable system holdings will act in a pro-competitive fashion in program distribution. Although Viacom offers a wide variety of program services on a national basis, as a cable operator, Viacom serves less than 2% of the total U.S. cable subscriber universe. See Kagan, Cable TV Investor, Dec. 18, 1992, at 8. These Viacom-owned cable systems account for significantly less than 5% of the total subscribership of the company's various programming networks.[6] As depicted in Figure 1, below, the geographic areas where Viacom owns cable systems (Salem, Oregon; Seattle/Tacoma, Washington; San Francisco Bay Area; scattered communities in northern California; Nashville, Tennessee; and Dayton, Ohio) involve

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[5](...continued) source of new program services and programming diversity. H.R. Rep. 41; S. Rep. 26; 1990 FCC Report 5008-10; 1988 NTIA Report 102. While Congress perceives that vertical integration could lead to anticompetitive conduct, the rules need not overreact and discourage small- and medium-sized cable operators from continuing to take the risks involved in creating and launching new program services. A de minimis exception would encourage a number of cable operators to invest in program services without the concern that doing so would only result in their being placed at a regulatory and competitive disadvantage.

[6] MTVN's and SNI's combined revenue is more than 2.5 times that of Viacom Cable. Moreover, less than 2.5 percent of the total license fee, and advertising revenues of MTVN and SNI networks are attributable to carriage of these program services by Viacom cable.

VIACOM CABLE - SYSTEM LOCATIONS
prepared for Viacom Cable

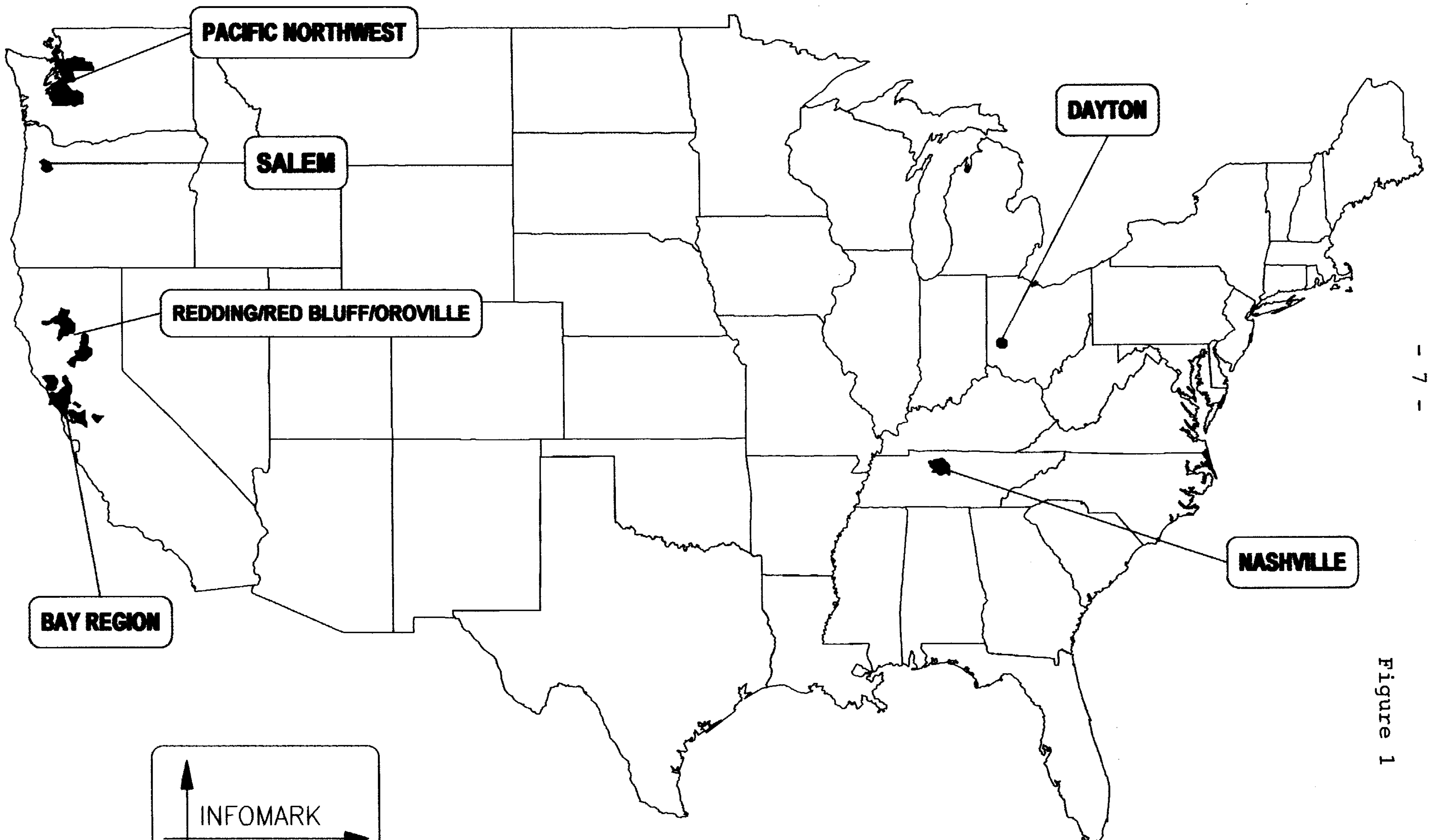

Figure 1

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discrete pockets of service and represent a tiny fraction of the nation's television marketplace.

Because Viacom's level of ownership on the cable distribution side is so low, its program services have no incentive to favor its affiliated cable systems or, indeed, the cable industry as a whole, over other multichannel video programming distributors.[7] The overriding business objective of Viacom's programming businesses and other similarly vertically-integrated programmers is to increase subscriptions to, and viewership of, its program services. To apply the restrictions of Section 628 to such programmers is simply nonsensical.

Because its core business is programming, Viacom has aggressively marketed its program services both to cable television systems and to alternative video distribution technologies. Indeed, as a relatively modest operator of cable systems, Viacom Cable often pays <u>more</u> for Viacom's owned program services on a negotiated basis than is paid by larger cable MSOs. This apparent "discrimination" against the company's own cable system operations simply reflects the recognized fact that Viacom's program services (like those owned by non-vertically-integrated owners) must routinely make contractual concessions to the largest MSOs in order to achieve the nationwide subscriber levels that are essential to business success.

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[7] Each of SNI, MTVN and Viacom Cable operates independently, and each is accountable to the corporate parent for its own profit and loss performance.

In order to further maximize distribution, all of Viacom's program services are marketed to all carried alternative distribution technologies -- SMATV, MMDS and HTVRO -- owners on a nationwide basis, including areas within and adjacent to Viacom-owned cable systems. Moreover, alternative distributors operating within the service area of Viacom cable systems are offered the same rates and terms that are available to SMATV, MMDS or HTVRO distributors nationwide. Viacom's aggressive marketing efforts to alternative technologies have achieved impressive results[8] and Viacom is actively seeking to raise the penetration levels of all of its program services through all methods of distribution.

Accordingly, an exception should be fashioned for any vertically integrated programmer whose affiliated cable systems account for less than five percent of the programmer's total U.S. subscription base.[9] This exception is appropriate because these entities can be presumed to lack the potential and incentive to favor affiliated cable operators at the expense of their core programming business. As in Viacom's case, such programmers have

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[8] For example, the SMATV, MMDS and HTVRO markets provide nearly 1.3 million subscribers to Showtime and The Movie Channel -- approximately 12% of their combined subscriber base.

[9] A limited exception to this rule should be fashioned from a cable operator's interest in a start-up program service. These services, at least initially, will necessarily appear primarily only on their affiliated cable systems.

no incentive to be anything but active participants in the delivery of programming to alternative technologies without a governmental mandate. In sum, because their limited cable holdings make such entities incapable of hindering significantly or preventing a multichannel video programming distributor from providing programming to subscribers, they simply cannot discriminate in the manner contemplated by Congress in enacting Section 628.

III. At Most, The Commission's Program Access Rules Should Be Limited to Geographic Areas in Which a Vertically Integrated Entity Actually Holds an Attributable Interest in a Local Cable System

The Commission also seeks comment on the geographic market that is "relevant to determining whether a proscribed behavior . . . causes anti-competitive harm . . . ." NPRM at ¶11. Specifically, it asks whether its prohibitions should apply in the "local markets where an entity is in fact vertically integrated." Id.

To the extent that any entity is subject to the rules, Viacom submits that the prohibitions should apply only in the local markets where the entity is vertically integrated. Even assuming that a vertically integrated entity is thought to have an incentive to favor its affiliates at the expense of their competitors, it clearly has no incentive to favor one competitor over another in areas in which it does not have an interest in both sides of the transaction. For example, the fact that a national programmer is an affiliate of a cable operator in one city has no bearing on the programmer's negotiations with potential distributors of its service in another. Rather, the programmer's principal business objective is to reach the greatest number of subscribers and viewers. Thus, the marketplace should be allowed to operate freely in areas in which the operator lacks any incentive to act in an anti-competitive manner. Accordingly, the program access regulations should be limited solely to circumstances where a vertically-integrated cable system serves substantially the same geographic area as a competing distribution system (i.e., where 50% or more of the subscribers of the competing distributor are located within the franchise area of the affiliated cable operator).

This geographic limitation should clearly be applied to vertically integrated programmers whose cable holdings account for less than 5% of the subscribership of commonly-owned programming services (to the extent that these entities are subjected to any regulation at all). Viacom's experience indicates that the workings of the marketplace are generally sufficient to ensure that such programmers will not operate in an anti-competitive manner in any market in the delivery of programming to multichannel video program distributors. Vertically integrated entities with de minimis cable holdings certainly have no incentive to engage in anti-competitive discrimination in local markets where they do not even have an interest in cable systems.

The Commission asks whether the "harm" to which Section 628 is directed should be measured within a market or across different local markets. NPRM at ¶11. Viacom submits that any harm, to the extent it exists, should be measured within the market in which vertical integration exists. Programming practices in one market do not have any bearing in another. Using the Commission's example, a price differential between the rates charged to a Tucson cable operator as compared to rates charged to an Orlando cable operator could not cause anti-competitive harm to the programming market in Orlando. See NPRM at ¶ 11, n.28. Rather, the only appropriate basis for comparison of price differentials must be made in the same market (e.g., Orlando, the only place where competition could be affected). Any differences in treatment with an operator in Tucson would be attributable solely to the results of arms-length negotiations between the parties and the working of the marketplace.

IV. Proper Interpretation Of Statute And Approach To Implementing Section 628

A. Section 628 Sets a High Standard for Discriminatory Conduct

Three separate and distinct prerequisites must be satisfied before any conduct can become actionable under Section 628 the Act. As the Commission correctly observes, practices must (i) be 'unfair,' 'deceptive,' or 'discriminatory;' (ii) be capable of significantly hindering multichannel video programming distributors from providing satellite programming to consumers; and (iii) significantly harm competition in multichannel video programming distribution." NPRM at ¶10.

The legislative history confirms that the Commission is correct in its careful reading of the statute. Congress emphasized repeatedly that the statute was intended to benefit subscribers by promoting competition, not any particular competitor.[10] More specifically:

- One of the stated purposes of the statute is to "increas[e] competition and diversity in the multichannel video programming market." Sec. 628(a).

- It is the policy of Congress in this Act to "protect consumers by regulating where effective competition does not exist as a substitute for market forces" and "ensure that consumers and programmers are not harmed by undue market power." House Committee on Energy and Commerce, H.R. Rep. No. 102-862 (Conference Report), 102d Cong., 2d Sess. (1992), at 51 ("Conference Report").

- The FCC's actions should be designed "to preserve and protect competition and diversity in the

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[10] That rule has proven to be a basic, and sound, tenet of antitrust jurisprudence. See, e.g., Atlantic Richfield Co. v. USA Petroleum Co., 495 U.S. 328, 338 (1990) ("The antitrust laws were enacted for 'the protection of competition, not competitors.'") (quoting Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962)); Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 488 (1977) (same); see also J. Truett Payne Co. v. Chrysler Motors Corp., 451 U.S. 557, 561-62 (1981) (automatic damages based on a difference in price should not be awarded in claim for price violations of Robinson-Patman Act because such a price differential is not itself proof of antitrust injury).

distribution of video programming." Conference Report at 93.

- A "principal goal" of the statute is "to encourage competition", noting that the House Committee believes that "competition is essential" and that "steps must be taken to encourage the further development of robust competition in the video programming marketplace." House Committee on Energy and Commerce, H.R. Rep. No. 102-628 (House Report), 102d Cong., 2d Sess. (1992), at 27 ("House Report").

- In proposing the statute, the Senate Committee was "taking steps to encourage competition and to rely on some greater governmental oversight of the cable industry where no competition exists." Senate Committee on Commerce, Science and Transportation, S. Rep. No. 102-92 (Senate Report), 102d Cong., 1st Sess (1991), at 18 ("Senate Report").

- Senator Inouye noted that "[t]he purpose of the legislation is very simple and straightforward. To promote competition in the video industry and to protect consumers from excessive rates and poor customer service where no competition exists." 138 Cong. Rec. S16,653 (daily ed. Oct. 5, 1992).

The wisdom in limiting the reach of the statute (and, in turn, the implementing regulations) to promoting competition -- not a particular competitor -- is obvious. If the Act were misconstrued to provide special economic protection for particular competitors, the marketplace would be adversely affected, and the competitive process distorted. An inefficient firm could sit back, hide behind the legislation and receive benefits it did not merit. Thus, when the protections afforded by the legislation are conformed to the express statutory purpose of "promoting competition," a complainant will not be able to misuse the legislation for its own economic gain, without any benefit to competition in general and consumers in particular.[11]

B. The Act Acknowledges That There Are Numerous Legitimate Reasons For Pricing Differentials That Should Not Be Treated As "Discriminatory" Under The Act

The need to isolate each of the distinct elements of Section 628(b) and to define properly the reach of Section 628 becomes apparent when one considers specific practices that some might perceive as "discriminatory." There are many reasonable and pro-competitive grounds for differences in the programming license fees that are paid by individual distributors. As explained more fully below (and as Section 628 plainly permits in (c)(2)(B)(ii)), such price variances exist for reasons that include significant differences in (i) a programmer's costs in selling and marketing its services to distributors with different numbers of subscribers or which use different technologies for delivering programming to consumers; and (ii) operating costs of

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[11] For that reason, Section 628(b) is limited to unfair, deceptive or discriminatory practices that could "significantly hinder" distributors from providing "satellite programming" to consumers. The statute was drafted carefully in its reference to "satellite programming" generally and not to any particular program service. If the statute provided relief for complainants in the absence of a showing that the distributor was hindered from providing satellite programming generally, as opposed to a particular program service, it would produce the odd result that a complainant who suffered no competitive harm -- because it had an ample supply of other satellite-delivered programming to be a viable competitor -- would still be able to maintain a complaint.

cable operators, on the one hand, and competing non-cable distributors on the other hand. See, e.g., 138 Cong. Rec. S16,671 (daily ed. Oct. 5, 1992) (colloquy between Senators Kerrey and Inouye). Because such differences in cost exist, both with regard to a programmer's costs in selling and marketing its services to distributors and distributors' operating costs in selling and marketing to consumers, it is clear that protecting competition, and not a particular competitor, is the proper course to follow to ensure that price differences having an economic foundation and not harming competition are not improperly targeted by the Commission.

As noted above, all of Viacom's program services are widely distributed via cable, SMATV, MMDS and HTVRO. Because each licensing agreement is the result of individual negotiations with a vast array of customers, each presenting unique facts and circumstances, the program services of SNI and MTVN are licensed to cable and non-cable distributors alike through an enormous range of contractual arrangements. Some of the factors that bear on each negotiation are the distributor's subscriber base, the programmer's agreement to tailor incentives for that particular distributor to reach a certain number of subscribers, the distributor's number of current and anticipated subscribers to the program service, the retail price set by the distributor, the distributor's penetration of the service, the amount and type of marketing to be conducted, and the channel position offered, by the distributor, commitments by the distributor to launch the service in additional, and perhaps specific, locations (e.g., Los Angeles or New York City), the timing of the launches, the duration of the agreement, the extent of available channel capacity, and revenue or subscriber guarantees that the distributor is willing to provide.

Thus, it is difficult to compare one distribution agreement with another, given the myriad factors that go into each negotiation. Indeed, there are nearly infinite gradations of benefits and concessions bargained for by the parties with respect to any number of factors in exchange for benefits and concessions with respect to any number of other countervailing factors.

In this wide range of contractual arrangements, the price variances that do exist both between technologies and within technologies have nothing to do with the anti-competitive concerns which the legislation was designed to redress -- the misuse of a program service by a vertically integrated cable operator so as to deny programming to competing distributors. Moreover, the statute expressly permits the imposition of requirements such as higher license fees, where they are the result of, among other factors, differences in creditworthiness and financial stability among distributors (see Section 628(b)(2)(c)(i)), differences in the costs incurred by both the programmer and the distributor (see Section 628(c)(2)(B)(ii)), and the economic benefits obtained by the programmer when, for example, it can induce the distributor to launch and effectively market the programmer's services as a result of contractual arrangements such as volume discounts and subscriber guarantees (see Section 628(c)(2)(B)(iii)).[12]

V. The Commission Should Adopt a "Zone of Reasonableness" Within Which a Disparity In Price Is Not Discriminatory

It is against this background that Viacom responds to the Commission's request for comments on the four options, as well as on any other standards, that it could apply in distinguishing between justifiable and discriminatory price differences. See NPRM, ¶¶ 20-25. It would be unwise to seek to homogenize the plethora of contractual arrangements that exist both within and between cable and non-cable distributors which are the result of legitimate business practices designed to maximize profits by

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[12] "Economic benefits reasonably attributable to the number of subscribers served by the distributor" go beyond volume discounts which reflect reduced transaction or administrative costs. Such economic benefits also include the value distributors can confer upon programmers by providing access to a large number of subscribers over which programming costs can be amortized. Helping to achieve and maintain a critical mass of subscribers to launch and then sustain a program service provides clear economic benefit to a programmer. Among other things, it helps assure the continued strength, viability and profitability of the program service; it affords access to more programming; it improves the terms upon which programming can be acquired or developed; and it enables the program service to enter into longer term arrangements with its programming suppliers to further assure the continuity of the program service.

increasing subscription to and viewership of a program service in a competitive market. Rather, the Commission should develop a "zone of reasonableness" which will filter out legitimate variances in the terms and conditions on which programming is licensed by those vertically integrated programmers to which Section 628 will apply and that do not merit the time, effort and expense of being subject to review by the Commission and the parties involved.

Thus, Viacom endorses "Option 1: Allowance for a 'reasonable' price differential," with certain important modifications. Specifically, Viacom believes that the Commission should provide for a zone of 30% in which variances in terms and conditions of carriage enjoy an irrebuttable presumption of legality.[13] By creating such a zone, the Commission would make clear that it does not intend to interfere with the competitive process unless there is a real reason to believe that competition is not working in a particular situation. If a threshold zone of reasonableness is not provided, the Commission, as well as the parties, will be required to expend extraordinary time and effort resolving complaints that the Commission can presumptively decide have no reasonable likelihood of leading to an injury to

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[13] The 30% zone represents the difference between the license fee paid by or offered to a competing distributor and that paid by an affiliated cable operator. <u>See</u> <u>infra</u>, note 18.

competition or to consumers.[14] It would serve no purpose to allow such complaints to proceed.

Use of the "zone of reasonableness" would take into account pricing factors deemed legitimate by the Act and would allow only "discriminatory" practices that have a realistic likelihood of "significantly hindering or preventing" competition to proceed to the adjudicatory stage.

VI. To Establish a *Prima Facie* Case of Price Discrimination, a Complaint Must Establish, Among Other Things, That the Price Differential is Outside the Zone of Reasonableness

The Commission also seeks comments on the standards that should be employed to determine whether a complainant has made its *prima facie* case. *NPRM* at ¶42. With regard to a claim of

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[14] The creation of a zone to account for legitimate pricing variances also fosters continuing competition among program services. SNI, for example, competes with its premium service competitors on wholesale prices and, importantly, on an array of other levels as well, such as the amount and type of on-going promotional support for cable operators and non-cable distributors, support for launching services, incentives for customer service representatives to better market the service, telemarketing support and the like. If the Commission promulgates rules requiring uniform pricing within and/or across technology lines, and such uniform pricing is necessarily public information, the clear effect of such rules would be to eliminate important price and non-price competition. The Commission should be careful to leave adequate room for rivals to compete aggressively, saving the adjudicatory process for those situations where competition will be impaired and consumers will be harmed.